

NCCNHR

The national consumer voice for quality long-term care

1828 L Street, NW, Suite 801
Washington, DC 20036
202 332-2275 Fax 202 332-2949
www.nccnhr.org

Alison Hirschel, President
Alice H. Hedt, Executive Director

November 9, 2007

The Honorable Fortney H. "Pete" Stark
Chair, Subcommittee on Health
House Committee on Ways and Means
1135 Longworth House Office Building
Washington, DC 20515

The Honorable Dave Camp
Ranking Member, Subcommittee on Health
House Committee on Ways and Means
1135 Longworth House Office Building
Washington, DC 20515

Dear Chairman Stark and Ranking Member Camp:

Twenty years after Congress passed landmark nursing home reform legislation, progress ensuring resident quality of care is threatened by the takeover of nursing home chains by private equity investors who are maximizing profits while isolating themselves from accountability to residents, workers, or regulators. A *New York Times* investigation, "At Many Homes, More Profits and Less Nursing," September 23, 2007, found that the typical private investor-owned facility scores worse on most quality indicators than other types of facilities; has 19 percent more serious health deficiencies than the national average; and ranks 35 percent below the national average in registered nurses. Unfortunately, staffing levels and quality of care at many for-profit, chain-operated facilities are already below acceptable standards.

The nursing home industry receives approximately \$75 billion a year in federal Medicare and Medicaid funding. As organizations that represent nursing home residents, their families, and nursing home workers, we urge you to use the Medicare legislation currently under consideration to take initial steps to improve transparency, accountability and staffing throughout the entire nursing home industry. These include the following recommendations, which can be implemented at minimal cost:

Increasing the transparency and accountability of corporate ownership

- Require full disclosure to the Centers for Medicare & Medicaid Services (CMS) of all affiliated entities with a direct or indirect financial interest in the facility and their parent companies, and the owners (including owners of the real estate), operators, and management of each facility; and require that all these entities be parties to the Medicare provider agreement and listed on Nursing Home Compare. CMS should maintain an ownership database and monitor the quality of care provided by the companies. Severe penalties, including exclusion from Medicare, should be established for hiding ownership or affiliated relationships.
- Many nursing home chains have created complex corporate structures that make compensating residents who have been harmed and recovering penalties from entities that actually have assets very difficult. As early as 1979, a GAO report, *Problems in Auditing Medicaid Nursing Home Chains*, HRD-78-158 (Jan. 9, 1979), <http://archive.gao.gov/f0302/108331.pdf>, identified complex transactions and relationships in chains and recommended better auditing practices. CMS should address this lack of transparency and the related problem of "judgment proof" or bankrupt entities that commit wrongdoing, such as violations of regulations or fraud, by requiring a surety bond. The provider agreement should be amended to require that providers including purchasers of an existing facility or company, deposit assets in a surety bond with the amount (to be determined) proportional to the number of beds in the facility. The bond would cover

NCCNHR (formerly the National Citizens' Coalition for Nursing Home Reform) is a nonprofit membership organization founded in 1975 by Elma L. Holder to protect the rights, safety, and dignity of America's long-term care residents.

November 9, 2007

Page 2

finances, civil monetary penalties, expenses associated with receiverships and temporary management arrangements imposed by state agencies, operational costs where residents are abandoned or workers are not paid, and attorneys' fees, litigation costs and damages awarded to plaintiffs in civil damage actions.

- Require CMS to certify the provider agreements annually to ensure that they are consistent with the current ownership structure and affiliated entities.
- Require CMS to post enforcement actions against facilities and maintain actual CMS Form 2567 survey reports on Nursing Home Compare.

Promoting improved staffing

- Require CMS to collect electronically submitted data from facility payroll records and temporary agency contracts on a quarterly basis, including data on turnover and retention; and require CMS to report that information on Nursing Home Compare as quality measures that include a ratio of direct care nursing staff (RNs, LPNs, and CNAs) to residents and turnover and retention rates. CMS should monitor the reported staffing levels on a quarterly basis and direct that a survey be conducted at facilities where staffing appears to be low and/or declining. CMS has already developed a system to collect and report this staffing information. The National Quality Forum has also recommended that CMS establish a nurse staffing quality measure.
- Require that information on cost reports for Medicare be reported based on five cost centers: (1) direct care nursing services; (2) other direct care services (e.g., activities, therapies); (3) indirect care (e.g., housekeeping, dietary); (4) capital costs (e.g., building, equipment and land costs); and (5) administrative costs. The cost reports should be reported electronically to CMS and summary data should be made available on Nursing Home Compare. In 2004, MedPAC recommended requiring nursing facilities and skilled nursing facilities to publish nursing costs separately from other costs on cost reports. This recommendation was reiterated in a June 2007 MedPAC report (www.medpac.gov/Chapters/Jun07_Ch08.pdf).
- Require CMS to conduct audits of nurse staffing data reports and cost reports at least every three years to ensure the accuracy of the data reported and to prevent fraud. Severe penalties should be established for filing false reports or failing to file timely cost reports.

It is imperative that Congress take immediate action to prevent the further deterioration of care.

Please contact Janet Wells, NCCNHR Director of Public Policy, 202/332-2275, or Michelle Nawar, SEIU Assistant Director of Legislation, 202-730-7232, if you have questions.

Sincerely,

NCCNHR: The National Consumer Voice for Quality Long-Term Care

Alliance for Retired Americans

American Federation of State, County, and Municipal Employees

B'nai B'rith International

Center for Medicare Advocacy

Consumers Union

National Senior Citizens Law Center

OWL – The Voice of Midlife and Older Women

Service Employees International Union

cc: All Members, Subcommittee on Health, House Committee on Ways and Means